

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

JUN 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) WT Docket No. 95-26
)
COMMERCIAL REALTY ST. PETE, INC.,)
JAMES C. HARTLEY, TERESA HARTLEY,)
and RALPH E. HOWE)

DOCKET FILE COPY ORIGINAL

TO: The Honorable Arthur I. Steinberg
Administrative Law Judge

MOTION FOR SETTLEMENT AGREEMENT

The Wireless Telecommunications Bureau ("Bureau") hereby requests the Presiding Law Judge to (a) approve the attached Agreement of Settlement; and (b) terminate this proceeding. In support thereof, it is alleged:

1. On February 16, 1995, the Commission issued an Order (FCC 95-59), directing Commercial Realty St. Pete, Inc., James C. Hartley, Teresa Hartley, and Ralph E. Howe to show cause why they should not be barred from future auctions and prohibited from holding any Commission license. The Commission directed that a hearing be held on issues specified in the show cause order, and Arthur Steinberg was designated as the Administrative Law Judge to preside in the proceeding. The parties subsequently filed Notices of Appearance ("NOA"). The NOA filed by Ralph E. Howe, however, was found to be defective and thus dismissed by the Presiding Judge. *See Memorandum Opinion and Order*, FCC 95M-73, released March 16, 1995. Consequently, Ralph E. Howe's participation in the show cause proceeding thereafter ceased.

2. On October 30, 1995, having found that the public interest would be served thereby, the Presiding Judge granted approval of a Joint Motion for Approval of Agreement, filed by Commercial Realty St. Pete, Inc., James C. Hartley, Teresa Hartley, and the Bureau. The proceeding was not terminated, however, because there had been no resolution of those aspects of the case that related to Ralph E. Howe. *See Memorandum Opinion and Order*, FCC 95M- 204, released November 1, 1995.

3. On June 8, 1996, settlement between Ralph E. Howe and the Bureau was achieved. But, because the NOA tendered by Ralph E. Howe was dismissed, he has not joined the Bureau in the instant motion. Nevertheless, he has expressed to the Bureau his desire to have the attached Agreement of Settlement placed before the Preceding Judge for

No. of Copies rec'd OTG
List A B C D E

consideration and for the Bureau to move for approval thereof and for the termination of this proceeding without further action.

4. Approval of the agreement and termination to the proceeding will serve the public interest. It will avoid further administrative proceedings, which would be costly and time consuming. In view of the agreement that has been reached, such proceedings are not necessary. Ralph E. Howe, while not admitting any wrongdoing, has made certain representations and commitments concerning his future participation in Commission auctions and his holding of Commission licenses. The Bureau is satisfied with these commitments and representations. Therefore, it appears that continuing this matter would serve no useful purpose.

5. WHEREFORE, it is respectfully requested that the Presiding Judge approve the attached Agreement of Settlement and terminate this proceeding without further action.

June 18, 1996

Respectfully submitted,

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

By:

A handwritten signature in black ink, appearing to read "Terrence E. Reideler", written over a horizontal line.

Terrence E. Reideler
Trial Attorney

AGREEMENT OF SETTLEMENT

Agreement of Settlement, made and entered into this 8 day of June, 1996, by and between Ralph E. Howe, an individual and resident of St. Petersburg, Florida, and the Wireless Telecommunications Bureau of the Federal Communications Commission, a federal agency headquartered in Washington, D.C. (hereafter "the Bureau"):

WITNESSETH:

WHEREAS, on February 16, 1995, the Federal Communications Commission ("the Commission") released an Order (FCC 95-59) in WT Docket No. 95-26, directing, inter alia, Mr. Howe to show cause why he should not be prohibited from participating in future Commission spectrum auctions and from holding any Commission license; and

WHEREAS, the Commission afforded Mr. Howe an evidentiary hearing; and

WHEREAS, the Bureau and Mr. Howe desire to resolve this proceeding on an amicable basis, and thereby avoid the time, effort and expense attendant to such evidentiary hearing, both on the part of Mr. Howe and the government;

NOW, THEREFORE, subject to the approval of the Administrative Law Judge, designated to preside in WT Docket 95-26, it is agreed as follows:

1. Further License Authorizations and Participation in Auctions:

Mr. Howe agrees that he will not participate in any Commission auction proceeding or apply for any additional Commission licenses for a period of three (3) years following the date of this Agreement, nor will he hold a five percent (5%) or greater attributable interest in any Commission license, or operate or control any such license. Nevertheless, Mr. Howe retains the right to seek reconsideration of this restriction at any time within the said three (3) year period.

2. No Admission of Wrongdoing:

By entering into this Agreement, Mr. Howe does not admit to any wrongdoing, whatsoever, in connection with the matters which are the subject of the proceedings in WT Docket No. 95-26.

3. Possible Appeal

Mr. Howe's participation in this Agreement of Settlement is without prejudice to any petition for reconsideration and/or appeal to the courts from the Memorandum Opinion and Order (FCC 95-367), released September 1, 1995, which denied review of the action by the Commission staff, denying Commercial Realty St. Pete, Inc.'s Petition for Extraordinary Relief, and/or if the Petition for Reconsideration filed by Commercial Realty St. Pete, Inc. on September 25, 1995 is denied.

4. Evaluation of Mr. Howe Fitness to Be a Licensee

In the event that Commercial Realty is successful on an appeal from the Memorandum Opinion and Order referred to in ¶3, supra, and an appellate authority directs the Commission to consider Commercial Realty's 20 applications, it is agreed that, when and if such applications are the subject of a Commission public notice or public notices accepting such applications for filing, the Commission shall evaluate the fitness of Commercial Realty and its officers, including Mr. Howe, to be awarded such licenses at that time, prior to action on any such license applications. This evaluation may include the issues designated in WT Docket No. 95-26, as well as any other relevant issues to make a determination of Commercial Realty's fitness to hold a Commission license.

5. Applicability of Equal Access to Justice Act

The Bureau and Mr. Howe each agree to assume their own costs, including attorney

fees, in the above-captioned matter. Mr. Howe waives any rights to seek awards of costs or fees related to the above-captioned matter from the United States, the Commission, the Bureau or its Chief. See 5 U.S.C. § 504 and 28 U.S.C. § 2412 (the Equal Access to Justice Act).

6. No Impact on Pending Notice of Apparent Liability:

This Agreement of Settlement does not in any manner affect the rights or obligations of the parties with respect to that certain Notice of Apparent Liability (FCC 95-58), released by the Commission on February 16, 1995.

7. Approval by the Administrative Law Judge:

This Agreement is subject to the approval of the Administrative Law Judge in WT Docket No. 95-26. The parties agree that they will, within five (5) days of this Agreement, file a joint motion with the Administrative Law Judge requesting such approval.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals or the hands and seals of their authorized representative on the day and year above written.

RALPH E. HOWE

BY: 
Ralph E. Howe

WIRELESS TELECOMMUNICATIONS BUREAU

